And in the fourth place, even if the accused was an addict, the case was not one in which binding over was expedient. The case was a clear one of trafficking and in the absence of any mitigating circumstances of the sort described in the Proclamation the necessary conditions were not fulfilled to enable the Court to make an order of binding over.

The learned President has completely misunderstood the purpose of section 18A. That section is intended to cover the case of the man of good character who is found in possession of opium for his own consumption only and who has been driven to such posession by a pathological craving and it is intended to secure that when such a man escapes punishment he should only do so on condition that he subjects himself to a course of treatment prescribed by the Court on adequate medical advice. It is not intended to cover the case of the man who is trafficking. If such an individual does labour under the misfortune of being an addict in the true sense, he can receive all appropriate treatment for that condition while he is undergoing the punishment which his offence has merited.

Appeal allowed.

PHOON LIAT SUM v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Hill, J.) June 3, 1950]

[Ipoh — Criminal Appeal No. 23 of 1950]

Opium and Chandu Proclamation, 1946 — Appeal — Questions of fact — Inferences from the evidence.

In this case the appellant appealed from his conviction and sentence on a charge of possession of opium, an offence under the Opium and Chandu Proclamation, 1946. The learned President of the Sessions Court had found that the appellant was in control of the opium, though he was not in actual physical possession of it.

Held, (1) that where an accused is found in control but not in actual physical possession of opium, it is essential that inferences drawn from the evidence as establishing knowledge in the accused must be correctly construed and that the conclusions inferred must be capable of only one construction, the guilty knowledge of the accused; (2) that in this case some of the evidence on which the inferences were drawn by the learned President of the Sessions Court was capable of a construction equally in favour of the appellant and the benefit of the doubt should have been given to him.

CRIMINAL APPEAL from the Sessions Court, Sitiawan.

J. D. M. Donnelly for the appellant.

E. N. Griffith-Jones for the respondent.

Hill, J. : — On the 24th March, 1950, the appellant was convicted and sentenced to nine months' rigorous imprisonment in the Sessions Court, Sitiawan, on the following charge :—

"That you on 1.2.1950 at about 8.00 p.m. near Customs Office Lumut, did have in your possession Opium, to wit, about 34 lbs., an offence under Sec. 3(1) of Proclamation 49/46 and punishable thereunder."

The appeal was against both conviction and sentence.

In arguing this appeal Mr. Donnelly laid great stress on the impropriety of Mr. Locke conducting the case in the lower Court in view of the fact that he was a witness. The undesirability of this practice is obvious and it has previously been the subject of unfavourable comment by this Court. Unfortunately, for practical reasons, it is generally unavoidable. In certain aggravated circumstances it might well result in a conviction being quashed on appeal, but in the present case under review I do not think that the dual role played by Mr. Locke caused any material injustice.

With regard to the admission of a passage in the statement made by the accused to Mr. Locke, to which exception was taken by Mr. Donnelly, it is clear that the statement was introduced deliberately into the evidence during cross-examination by counsel for the defence and it is equally clear that the learned President was careful to exclude from his considered judgment any weight whatever to this passage. In fact he ignored it.

The written judgment of the learned President delivered by him on the 24th March is typical of the careful decisions we have come to expect from him. Moreover, I am very conscious of the fact that by having the witnesses in front of him in Court he was able at first hand to come to conclusions and draw inferences.

The learned President was satisfied that the appellant was in conscious possession, that he knew he had opium in his possession, and accordingly convicted him. This conclusion was based mainly, if not entirely, on certain inferences drawn from the evidence.

Where an accused is found in control but not in actual physical possession of opium, as the evidence disclosed in this case, it is essential that inferences drawn from the evidence as establishing knowledge in the accused must be correctly construed and the conclusions inferred must be capable of only one construction, the guilty knowledge of the accused.

After very careful consideration of the inferences drawn by the learned President, I have come to the conclusion that some, if not all, of them do not stand up to this test. Some of the evidence on which they were based was capable of a construction equally in favour of the accused.

I refer in particular to the inferences drawn from the evidence relating to the blank invoice form of Chop Sin Hup Huat; the conclusion that the name See Hong was necessarily false and the inference therefrom; the inference regarding the extra weight of the stoves and the conclusion that the witness Cheah Bak Weng (P. W. 5) would not have placed the stoves in the hands of others unless one person at least knew what they contained and could be trusted. The latter certainly, but not necessarily the former.

I feel, therefore, though I confess with some hesitation, that there was a doubt in this case, the benefit of which it would have been safer to give to the appellant.

For this reason I allow the appeal and quash the conviction.

Appeal allowed.

G. A. KHUMREE & CO.
v.
S. K. MOHAMOODHU & CO.

[Orig. Civ. Juris. (Jobling, J.) May 31, 1950]

[Penang — Originating Summons No. 33 of 1950]

Japanese Judgments and Civil Proceedings Ordinance, 1946 — Judgment obtained in Japanese Court on pre-occupation debt — Judgment debt paid in full during occupation — Whether payment should be revalued — Debtor and Creditor (Occupation Period) Ordinance, 1948.

In this case the applicants had obtained judgment in the Japanese Court against the respondents in October 1943 on a pre-occupation debt. They took no steps to enforce the judgment and in July 1945 the respondents paid the judgment debt in full. The applicants applied for substitution of the judgment of the Court for the judgment given by the Japanese Court and also applied that the provisions of the Debtor and Creditor (Occupation Period) Ordinance, 1948, be taken into account by the Court and that the repayment be revalued.

Held, that the amount paid by the respondent must be revalued in accordance with the Debtor and Creditor (Occupation Period) Ordinance and that a judgment of the Court for the balance found to be due be substituted for the judgment of the Japanese Court.

Case referred to :—

(1) *Thellusson v. Liddard* (1900) 2 Ch. 635.

ORIGINATING SUMMONS.

T. E. Conaghan (*Sir Husein Abdoolcader* with him) for the applicants.

Ong Huck Lim for the respondents.

Cur. Adv. Vult.

Jobling, J. : — This matter came up for argument in Open Court on an Originating Summons applying for substitution of a judgment of this Court for a judgment given by the Japanese Court pursuant to the Japanese Judgments and Civil Proceedings Ordinance, 1946.

The facts are not in dispute. The applicants obtained judgment in the Japanese Court against the respondents in October, 1943 but took no steps to enforce it. In July, 1945 the respondents paid the judgment debt in full.

The Japanese Judgments and Civil Proceedings Ordinance, 1946 provides for the substitution of judgments of this Court for those of the Japanese Court and sub-section (5) of Section 5 of that Ordinance provides that in issuing any judgment under the provisions of the Ordinance the Court shall take into account .—

"the extent to which the Japanese decree may already have been satisfied, the provisions of any Ordinance dealing with the payment of debts in Japanese or Japanese sponsored currency and all such matters as may be prescribed."

Since the enactment of this Ordinance the Debtor and Creditor (Occupation Period) Ordinance, 1948 has been passed and provides for the revaluation of certain payments made in Japanese currency during the Japanese occupation. Section 4 of that Ordinance, after referring to payments accepted under duress which has no application here, provides for revaluation of any payment made during the Japanese occupation in discharge of a debt where the debt :—

(1) was incurred prior to the commencement of the occupation period.
(2) exceeded $250/-.
(3) was not due at the time of payment.
(4) or if due, was not demanded by the creditor.
(5) or if due and demanded, was not paid within three months of the demand or any extended period that may have been agreed upon.

Mr. T. E. Conaghan for the applicants submitted that the matter came within the Ordinance as it was a pre-occupation debt exceeding $250/- and although the legal proceedings to obtain judgment may have constituted a demand the amount was not paid within three months of the date of the judgment.

On the authority of *Thellusson v. Liddard*[1] he contended the original debt had not merged in the judgment debt, as merger must now be both at law and in equity and there was no merger in equity here.